IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2488 of 2001

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHANTINIKETAN EDUCATION TRUST

Versus

SECRETARY EDUCATION DEPTT.

Appearance:

1. Special Civil Application No. 2488 of 2001

MR ASHISH M DAGLI for Petitioner No. 1

MS MANISHA SHAH, AGP for Respondents No. 1,2 & 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 24/10/2001

ORAL JUDGEMENT

#. Heard the learned advocates.

#. The petitioner is a Public Trust established by

minority community. The Trust has established and is administering a Secondary School in Hindi Medium at Ahmedabad. It appears that in the academic year 1999-2000 some 128 students of Standard-IX of the petitioner's school had passed the examination and were admitted to Standard-X. The petitioner had been given permission to open two classes of Standard-X. Keeping in view the number of students passing Standard-IX, it would not be possible for the school to accommodate all the 128 students in two classes of Standard-X. The petitioner, therefore, applied for a permission to open one more class of Standard-X, commencing from June, 2000. The said application was, however, rejected by the Commissioner, Mid-day Meal and Schools, under its order dated 25th August, 2000. Feeling aggrieved, the petitioner preferred revision before the State Government, which too was rejected on 4th December, 2000. Feeling aggrieved, the petitioner has preferred the present petition.

#. The permission for opening new class has been rejected on the ground that the petitioner does not have sufficient number of students for three classes of Standard-X.

#. The petitioner has relied upon the provisions contained in Regulation 9(13)(iii) of the Gujarat Secondary Education Regulations, 1974 (hereinafter referred to as 'the Regulations') and the Government Resolution dated 31st May, 1977.

#. The petitioner claims that, it being a minority, is not supposed to have more than 35 students in a class. If, that is the strength to be maintained, the petitioner does have sufficient number of students to fill in three classes of Standard-X. It is contended that the respondents have relied upon a Circular issued by the Government, under which, the number of students to be admitted to a class has been increased to 60 from that of 45 (for non-minority schools). Mr.Dagli has submitted that the Regulations are statutory in nature and shall have overriding effect over the Circular issued by the Government. He has, therefore, strenuously urged that the provisions contained in the above referred Resolution dated 13th May, 1977 shall govern the subject matter. The petitioner can not be asked to accommodate 128 students in two classes. The petitioner is, therefore, entitled to permission for opening the third class of Standard-X.

#. I am unable to agree with Mr.Dagli. Ms.Manisha Shah,

learned AGP has produced copy of the Government Resolution dated 30th May, 2000 issued in exercise of powers vested under sub section (3) of Section 53 of the Gujarat Secondary Education Act, 1972 (hereinafter referred to as 'the Act'). Under the said Resolution, the existing Regulation 9(13)(iii) of the Regulations has been substituted. The Regulation 9(13)(iii) as was prevalent prior to the aforesaid Resolution dated 30th May, 2000 reads as under :

> "admissions to division of a standard should be limited to the number of students for which there is accommodation in the class room, subject to a maximum of 50"

The amended Regulation 9(13)(iii) essentially makes a change to the extent that the maximum number of students which was restricted to 50 under the then existing regulation has now been raised to 60. The school can accommodate as many as 60 students in one class. The school is also permitted to accommodate 5 more students beyond 60 students provided there is enough space and other facilities to accommodate 5 more students in a class.

Section 53 of the Act empowers the Gujarat Secondary Education Board to make regulations for the purpose of carrying into effect the provisions of the Act. Sub section (3) of the said Section 53 provides, inter alia, that no regulation or alteration or revocation of a regulation made under the said section shall have effect until the same has been sanctioned by the State Government. The above referred Resolution dated 30th May, 2000 has been passed by the Gujarat Secondary Education Board in exercise of the powers conferred upon under above Section 53(3) of the Act. Hence, I am of the view that the Regulation 9(13)(iii) has been substituted after following proper procedure. It is the substituted Regulation 9(13)(iii) which shall govern the subject matter. The reliance placed on the Government Resolution dated 13th May, 1977 is misconceived. The said Resolution has been passed in connection with the grant admissible to the schools. Unless a school has a minimum number of students indicated therein, the school would not be entitled to receive grant. That, however, does not mean that the school shall not have students in a class more than the said number. The said Resolution does not deal with the number of students which can be admitted to a class. The argument that the petitioner can have 35 students in a class and the petitioner should, therefore, have atleast three classes for

accommodating its 128 students is falacious. If the relevant regulation requires that the school can give admission to a class to as many as 60 students and can give admission even to five more students, provided that proper facilities are available, such Regulation shall also apply to the petitioner. It is an admitted fact that at the relevant time, the petitioner had 128 students to be admitted to Standard-X.

#. In the circumstances, if the authorities below was of the opinion that the petitioner did not have sufficient strength of students for three classes, the same can not be said to be errorneous or illegal. The orders made by the authorities below, therefore, do not call for interference. The petition is dismissed. Rule is discharged. The parties shall bear their own costs.

24th October, 2001. (Ms. R.M. Doshit, J.)

/sakkaf